



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Manoel Tenorio
Serial No.: 09/895,525
Filing Date: June 28, 2001
Group Art Unit: 2171
Examiner: Te Y. Chen
Title: *Association of Data with a Product Classification Schema*

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Technology Center 2100

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

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Date of Deposit: March 30, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Willie Jiles

Willie Jiles

Letter Regarding Incomplete Advisory Action

Applicant mailed an Information Disclosure Statement (IDS) on March 12, 2004, which was submitted pursuant to 37 C.F.R. § 1.97(d). The Examiner mailed the Advisory Action on March 23, 2004. The Advisory Action included no indication that the Examiner had considered the references cited in the IDS submitted on March 12, 2004, such as a PTO-1449 initialed by the Examiner. Applicant recognizes that due to certain processing delays, the IDS may not have reached the desk of the Examiner prior to the Examiner's mailing of the Advisory Action. However, Applicant respectfully submits that the Advisory Action was incomplete because Applicant was entitled to have the IDS considered in the Advisory Action.

37 C.F.R. § 1.97(d) states:

An information disclosure statement *shall be* considered by the Office if filed by the applicant after the period specified in paragraph (c) [i.e. after the mailing of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application] of this section, provided that the information disclosure statement is filed on or before payment of the issue fee, and is accompanied by:

- (1) The statement specified in paragraph (e) of this section; and
- (2) The fee set forth in § 1.17(p).

(emphasis added)¹

Applicant filed the IDS mailed March 12, 2004 (copy attached) prior to the payment of any issue fee, including the required statement as provided in 37 C.F.R. § 1.97(e). Receipt of this IDS is evidenced by the acknowledgement post card bearing a PTO date stamp of March 12, 2004 (copy attached). Furthermore, pursuant to 37 C.F.R. § 1.97(d), Applicant enclosed with the IDS a check for \$180.00 to cover the cost of filing the IDS after the mailing of the final Office Action (copy of check stub attached). Receipt of the check is also evidenced by the acknowledgement post card. Thus, Applicant timely and properly filed the IDS, and 37 C.F.R. § 1.97(d) and M.P.E.P. § 609 require that the Examiner consider the IDS. Thus, since the filing of the IDS predates payment of any issue fee, and Applicant filed the IDS with the appropriate fee, Applicant is entitled to have the IDS considered on the merits in an Office Action or Advisory Action.

Accordingly, Applicant respectfully requests that the Examiner (1) consider on the merits the art submitted with the IDS; and (2) either issue a new Office Action or a new Advisory Action which takes into account the art submitted with the IDS or otherwise indicate that the art does not affect prosecution of the present Application. Applicant intends to Appeal the Examiner's rejection of Claims 1-37 in the present Application (a Notice of Appeal is being filed concurrently with this Letter).

If the Examiner believes a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Christopher W. Kennerly, Attorney for Applicant, at the Examiner's convenience at (214) 953-6812.

¹ The M.P.E.P. provides, "Once the minimum requirements of 37 CFR 1.97 and 37 CFR 1.98 are met [which they were in this case], the examiner has an obligation to consider the information." M.P.E.P. § 609; *see also* M.P.E.P. § 609 (III)(B)(3).

Applicant believes no fees are due with respect to this Letter; however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Christopher W. Kennerly
Reg. No. 40,675

Correspondence Address:
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Dallas, Texas 75201-2980
(214) 953-6812

Date: March 30, 2004



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Name of Inventor(s): <u>Manoel Tenorio</u>		Receipt Date & Serial No:	
Title of Invention: <u>Association of Data with a Product.</u>			
Client or Applicant: <u>i2 Technologies</u>	BB File No.: <u>020431-0843</u>		
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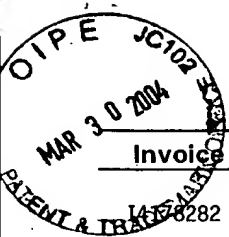
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